Terms and Conditions of Sale and Delivery

1. Applicability

1. Our terms and conditions only apply to entrepreneurs in the sense of Section 310 of the German Civil Code (BGB).
2. The following terms and conditions apply to all contracts, deliveries and other services unless they are amended or excluded with our express written consent. In particular, they apply even if we carry out the delivery/service without reservation in the knowledge of the deviating terms and conditions of our contractual partner. The general terms and conditions of our contractual partner only apply if we acknowledge them in writing.
3. Our terms and conditions also apply to all future contracts, deliveries and services, even if a copy of them is not sent to our contractual partner again along with our quotation or order confirmation.

2. Quotations and conclusion of contract

1. Our quotations are non-binding. Contracts and other agreements only become binding following our written confirmation or our performance of the delivery/service.
2. Agreements made between our employees or representatives and our contractual partner during or after the conclusion of the contract require our written confirmation in order to be effective; the power of representation of our employees and representatives is limited in this regard.

3. Samples and estimates

Samples shall be invoiced separately. Estimates need only be paid for if this has been expressly agreed.

4. Prices, price increases and payment

1. Our prices are for delivery ex works and do not include packaging, transportation charges, customs, insurance, postal charges or VAT; we always charge the latter at the rate applicable on the date of the delivery or service.
2. If our material and processing costs and/or our pay scale should increase between the conclusion and execution of the contract – for contracts that are to be executed over four months after their conclusion or can only be executed over four months after their conclusion for reasons for which our contractual partner is responsible – we are entitled to demand a proportionate increase for the agreed price based on the percentage of the affected purchase price and/or wage costs.
3. Unless agreed otherwise or provided for otherwise in our quotation or order confirmation, our invoices are payable within 14 days with a 2% discount or in full within 30 days of receipt.
4. When our invoices mature, we shall charge interest at a rate of 9 % above the base interest rate. This does not affect any further claims we might have, especially on the grounds of default on the part of our contractual partner.
5. Offsetting is not permitted with counter-claims that are disputed by us or have not been established by final judgement. No right of retention may be exercised due to claims that are not based on the same contractual relationship if the claims are not recognised by us and have not been established by final judgement.

5. Deterioration of the assets of the contractual partner

1. If any of the circumstances described below occur or if we subsequently become aware that such circumstances existed during the conclusion of the contract, we can demand that our contractual partner pay the agreed price in advance. This applies under the following circumstances:

   Judicial or extrajudicial insolvency or composition proceedings are opened in connection with the assets of our contractual partner or the initiation of such proceedings is rejected due to lack of assets, or a bank or credit agency issues a credit report in writing which casts doubt on the creditworthiness of our contractual partner, or a check or bill accepted by us from our contractual partner is not redeemed or is protested.

2. If our contractual partner fails to comply with our legitimate request for advance payment within a reasonable subsequent deadline set by us even though we have made our contractual partner aware that we will refuse to accept any further payments from it after the deadline, we are entitled to withdraw from the contract or demand damages in lieu of the payment, although only with regard to the part of the contract that we have not yet executed.

6. Shipping, transfer of risk and insurance

1. The risk of the accidental destruction or deterioration of the goods always transfers to our contractual partner when the goods are dispatched, regardless of the location and even if, in an exceptional case, free delivery and/or installation have been agreed.
2. If the goods are not to be dispatched or if dispatch is delayed at the request of our contractual partner or for reasons for which our contractual partner is responsible, the risk of the

accidental destruction or deterioration shall transfer to our contractual partner as soon as we provide notice that the goods are ready for dispatch. In this case, we shall store the goods at the expense and risk of our contractual partner.

7. Delivery and performance deadlines

1. Delivery and performance deadlines are only binding if they have been confirmed by us in writing.
2. A delivery or performance deadline determined only by its duration starts at the end of the day on which the parties come to an agreement on all details of the content of the contract (upon our acceptance of the contract at the earliest), although not before the provision of all documents, permits and licences to be obtained by our contractual partner and not before our receipt of any advance payment to be made by our contractual partner.
3. Delivery or performance deadlines are considered met if the goods – or our notification that the goods are ready for dispatch if the goods are not to be dispatched – have been sent within the deadline.

   With regard to installation services to be rendered by us, we must set up the delivery item so that it is ready for acceptance within the deadline.
4. Periods shall be reasonably extended and deadlines reasonably postponed – even during default – in cases of force majeure and unforeseen hindrances for which we are not responsible occurring after the conclusion of the contract, provided that such hindrances can be proven to be of significant influence to the delivery of the sold item. Strikes and lockouts count as hindrances for which we are not responsible in the sense of this section. These provisions apply even if these hindering circumstances happen to our supplier or its sub-suppliers. If delays to deliveries caused by such circumstances last for more than eight weeks, our contractual partner is entitled to withdraw from the contract to the exclusion of all other claims.
5. Delivery periods and deadlines shall be postponed by the period of time in which our contractual partner is in default on its obligations – including those under different contracts in the same business relationship – or fails to create the conditions for the start or continuation of the work it is to carry out, especially if it fails to provide the necessary documents, plans or other specifications. Our contractual partner bears the burden of proof with regard to demonstrating that it has created the necessary conditions and provided the necessary documents, plans and specifications.

8. Declaration regarding the choice of rights following the setting of a subsequent deadline

In all cases in which our contractual partner has set us a subsequent deadline due to a lack of delivery or an improper delivery and this deadline has expired, we are entitled to demand that the contractual partner, within a reasonable deadline, declare whether it will continue to assert its claim to performance or subsequent performance despite the expiry of the deadline or transition to the other rights that have been granted to it. If our contractual partner fails to make such a statement within the reasonable deadline provided, its claim to performance or subsequent performance is excluded. If, within the reasonable deadline, our contractual partner states that it will continue to demand performance or subsequent performance, our contractual partner is free to set another deadline and, if it too should expire, exercise other rights.

9. Default and exclusion of the duty of performance

If we default on the delivery or performance or if our duty of performance is excluded under Section 275 BGB, we can only be held liable to pay damages in line with the requirements and within the scope of section 12 (3), although with the following additional qualifications:

1. If we default on delivery and there is only one instance of ordinary negligence on our part, any claims of our contractual partner to damages are limited to a fixed amount equal to 1% of the value of the delivery for each full week of default, up to 8% of the value of the delivery, in which regard we reserve the right to prove that the default has resulted in a lesser or absolutely no loss.
2. If we default, our contractual partner is only entitled to compensation instead of the performance if it has previously set us a reasonable subsequent deadline of at least six weeks for delivery, in which regard, however, the contractual partner reserves the right to set us a reasonable subsequent deadline of less than six weeks if a subsequent deadline of at least six weeks for delivery is unreasonable for it on a case-by-case basis.
3. As a rule, any right of withdrawal or right to compensation on the part of our contractual partner is limited to the outstanding part of the contract unless our contractual partner no longer has a reasonable interest in the completed part of the contract.
4. Claims for damages due to default filed against us and the exclusion of the duty of performance under Section 275 BGB

become time-barred one year after the start of the statutory limitation period.

5. These provisions do not apply if the damage resulted from an injury to the life, limb, health or freedom of our contractual partner or if the damage is based on an intentional or grossly negligent breach of duty by us, our legal representatives or our vicarious agents; furthermore, with regard to default, they do not apply if a fixed date has been agreed for the business.

10. Default on acceptance by our contractual partner

1. If our contractual partner fully or partially defaults on acceptance of our services, we are entitled – following the expiry of a reasonable subsequent deadline set by us – to withdraw from the contract or demand compensation instead of the service, although only with regard to the part of the contract that we have not yet executed. We are not entitled to compensation if our contractual partner was not culpable with regard to defaulting on acceptance. If our contractual partner defaults on acceptance, our statutory rights are not affected.
2. If it defaults on acceptance, the contractual partner must reimburse our storage costs, warehouse rent and insurance costs for goods that are ready for acceptance but which have not yet been accepted. We are not obliged to insure stored goods.
3. If the delivery of the goods is delayed at the request of the contractual partner or if the contractual partner defaults on acceptance of the goods, we, one month after sending notification of our readiness for delivery, can charge a storage fee equal to the standard costs of storage with a local specialist company, in which regard we reserve the right to demand additional compensation if the loss we suffer is actually greater.

11. Compensation instead of the service

If we are entitled to compensation instead of the service, we can demand 15% of the portion of the contractual price attributable to the affected part of the delivery item as compensation without having to provide evidence, in which regard our contractual partner is free to produce evidence that we did not suffer as much damage or any at all. This does not affect our right to claim compensation for more extensive actual losses.

12. Liability for defects and compensation

1. The claims of our contractual partner due to defects in the items delivered by us shall become time-barred one year after the delivery of the items. However, the claims to damages and reimbursement of futile expenditure pursuant to Section 437 (3), Section 439 (2) and (3) and Section 634 (4) BGB remain subject to the statutory deadline if the damage resulted from an injury to the life, limb, health or freedom of our contractual partner or if the damage is based on an intentional or grossly negligent breach of duty by us, our legal representatives or our vicarious agents.

   The statutory limitation period applies even if we have maliciously concealed the defect.

   The cases described in Section 439 (2) and (3) and Section 445 (1) BGB are subject to the provisions set out therein, although lines 1, 2 and 3 still apply to the entitlement to damages.

2. As soon as the goods are delivered, our contractual partner is obliged to inspect the goods and notify us immediately if a defect is discovered, provided that this is feasible as part of the normal course of business. If our contractual partner fails to do so, the goods count as accepted unless the defect was not or would not have been evident during the inspection.
   If such a defect appears at a later date, our contractual partner must notify us as soon as possible, otherwise the goods count as accepted regardless of the defect. Punctually sending the notification shall suffice with regard to the rights of the contractual partner.
   Defects in a part of the delivery do not entitle the contractual partner to complain about the entire delivery unless the contractual partner would not have an interest in the non-defective part.
3. The rights of our contractual partner due to defects in the item are set out by the statutory provisions, although our contractual partner must set us a reasonable subsequent performance deadline of at least four weeks; we can choose to either remedy the defect or deliver a non-defective replacement. On a case-by-case basis, our contractual partner is entitled to set us a reasonable deadline of less than four weeks if a subsequent performance deadline of at least four weeks is unreasonable for it.

   If only some of the goods delivered by us are defective, the right of our contractual partner to rescind the contract or demand compensation instead of performance is limited to the defective part of the delivery/services unless this limitation is not possible or is unreasonable for our contractual partner.

The claims of our contractual partner to damages due to defects in the delivery or service are limited as specified in section 3 below.

4. Our liability for damage resulting from injuries to the life, limb, health or freedom of our contractual partner resulting from a culpable breach of duty is neither excluded nor limited.

   We can only be held liable for other damage suffered by our contractual partner if it is based on an intentional or grossly negligent breach of duty by us, one of our legal representatives or a vicarious agent.

   If we merely caused the damage through ordinary negligence, we can only be held liable if we breached material contractual duties; our liability is limited to the reasonably foreseeable damage that can be considered typical for this type of contract.

   Otherwise, our contractual partner is not entitled to damages due to a breach of duty or tort or on other legal grounds.

   These limitations of liability do not apply if warranted characteristics are not present or to warranties, if and in so far as the warranted characteristics or the warranty were intended to protect the partner from damage occurring to the delivered goods themselves.

   If our liability is excluded or limited, this also applies to the personal liability of our employees and vicarious agents.

   These limitations of liability also apply to consequential damage.

   However, these limitations of liability do not apply to claims under the German Product Liability Act (ProdHaftG).

13. Retention of title

1. In order to satisfy all claims we have against our contractual partner at present or in the future, our contractual partner shall provide us with the following collateral that we will release at our own discretion if requested to do so, provided that its nominal value consistently exceeds the amount owed to us by more than 20%:

   The delivered goods remain our property.

   Any and all processing or alteration of the goods is for us as the manufacturer, although it does not impose any obligations on us. If the goods delivered by us are processed with other items not belonging to us, we obtain proportional joint ownership of the new item based on the ratio between the price of the goods delivered by us on the invoice and the price of the other goods on the invoice at the time of processing.

   If our goods are combined with other items to form a single item or if the other item is considered the main item, our contractual partner hereby transfers joint ownership of the new item to us – provided that the new item belongs to it – proportionally based on the ratio between the invoice value of the goods supplied by us and that of the other used goods at the time of combination.

   Any transfer necessary to obtain ownership or joint ownership is replaced by the agreement that our contractual partner shall store the item for us as a borrower or, if our contractual partner does not possess the item, hereby assign us the claim to restitution against the party in possession of the item.

   Items that are our (joint) property in line with these provisions are hereinafter referred to as ‘goods subject to retention of title’.

2. Our contractual partner is entitled to sell the goods subject to retention of title as part of the normal course of business, as well as to combine or process them with items belonging to third parties. The contractual partner hereby assigns to us the receivables in connection with the goods subject to retention of title resulting from their sale, combination or processing or on any other legal grounds, either in full or proportionally based on our joint ownership of the sold, processed or combined item. If such receivables are on an open account, this assignment also encompasses all outstanding balance claims. The assignment takes precedence over the remainder.

   Subject to revocation, we authorise our contractual partner to collect the assigned receivables. The contractual partner must transfer the collected amounts to us without undue delay if and as soon as our receivables become payable. If our receivables are not yet payable, the contractual partner must book the collected amounts separately.

   This does not affect our right to collect the receivables ourselves. However, we undertake not to collect the receivables as long as our contractual partner fulfils its payment obligations resulting from the proceeds received, does not default on payment and, in particular, no application is filed for insolvency or composition proceedings and payments are not suspended.

   At our request, our contractual partner is obliged to notify us of the assigned receivables and their debtors and provide us with the relevant documents and all necessary information for their collection. If we are obliged to collect the receivables, our contractual partner is obliged to provide us with all necessary information for their collection and notify the third-party debtors of the assignment; we are also entitled to notify the debtor of the assignment ourselves.

The rights of our contractual partner to re-sell, process or combine the goods subject to retention of title and to collect the assigned receivables lapses automatically if its payments are discontinued or if it applies for or opens insolvency proceedings or judicial/extrajudicial composition proceedings.

3. Without undue delay, our contractual partner must notify us of any third-party attachment to the goods subject to retention of title or assigned receivables. Our contractual partner must bear any costs of intervention or defence.

4. Our contractual partner is obliged to treat goods subject to retention of title with care, and especially to insure them at its own expense against fire and water damage and theft up to their replacement value.

5. If our contractual partner infringes the contract – especially by defaulting on payment – we are entitled to take back the goods subject to retention of title at the expense of our contractual partner or demand the assignment of claims for restitution of the contractual partner against third parties without having to announce our withdrawal from the contract first or at the same time. In particular, our taking back or seizing the goods subject to retention of title does not represent a withdrawal from the contract unless we expressly declare our withdrawal in writing.

6. If our retention of title should lose its validity with regard to deliveries abroad or for any other reason or if, for any reason, we should lose ownership of the goods subject to retention of title, our contractual partner is obliged, without undue delay, to provide us with other collateral for the goods subject to retention of title or for our receivables that is effective under the law that applies to the registered office of the contractual partner and best approximates the retention of title under German law.

14. Returns

In the interests of fairness, we accept returns of delivered goods even though the contractual partner is not legally entitled to them. As a rule, such returns require our prior consent and consultation (we must be notified in advance). Custom products and the Ortho Lady and Ortho Gent product lines cannot be returned. We reserve the right to refuse to accept returns. When returning goods, the contractual partner must provide us with evidence that it received them. It is sufficient to provide the delivery order number and date in the form of a copy of the deliver order or by enclosing the return delivery order. We only accept goods in their original packaging within 90 days of delivery. They must be in a condition in which they can still be sold (not worn, damaged or contaminated). Returns for credit or a replacement made 120 days or more after the delivery date cannot be accepted. We charge a processing fee equal to 30% of the net order value for returns/replacement of goods between 91 and 120 days after the delivery date. The contractual partner must bear the costs of the return delivery.

15. Ownership of documents and non-disclosure

1. Diagrams, drawings, calculations, templates and models remain our property. Our contractual partner undertakes not to render such items accessible to third parties in any way without our express consent. Our contractual partner undertakes to pay us a contractual penalty of €10,000.00 per culpable infringement of these obligations. This does not affect our right to demand compensation for actual damage suffered in excess of the contractual penalty.

2. Both parties mutually undertake to treat all private commercial and technical information of which they become aware as part of their partnership as they would their own trade secrets and maintain absolute silence with regard to third parties. Each party undertakes to pay the other a contractual penalty of €6,000.00 per culpable infringement of these obligations. This does not affect the right of each party to demand compensation for actual damage suffered in excess of the contractual penalty.

16. Property rights

1. If the goods are to be manufactured based on drawings, templates or other information provided by our contractual partner, our contractual partner affirms that such information does not violate any third-party rights, especially patents, utility patents, copyright and other intellectual property rights. The contractual partner shall indemnify us against third-party claims resulting from an infringement of such rights. Furthermore, our contractual partner shall cover all costs incurred by us in our defence against third parties alleging the infringement of such rights.

2. If our development work should produce results, resolutions or methods that can in some way be protected, we are the sole owner of the resulting property rights, copyrights and rights of use and we reserve the right to register such property rights in our own name.

17. Assignment

Our contractual partner may only assign claims of any kind against us with our written consent.

18. Place of fulfilment, place of jurisdiction, applicable law

1. The place of fulfilment and of exclusive jurisdiction for deliveries, services and payments, including actions for a cheque or bill, as well as all disputes between the parties arising from or in connection with the contractual relationship is Remscheid, provided that our contractual partner is a merchant. However, we are entitled to file a lawsuit against our contractual partner at another valid place of jurisdiction pursuant to Section 12 et seq. of the German Code of Civil Procedure (ZPO).

2. The relationship between the contractual partners is governed exclusively by the law of the Federal Republic of Germany to the exclusion of international private law, especially the UN Convention on Contracts for the International Sale of Goods (CISG) and other international treaties designed to standardise commercial law.

Remscheid, May 2018